

Standing Committee on Justice and Community Safety  
(Legislative Scrutiny Role)

SCRUTINY REPORT 32

23 JULY 2019



# THE COMMITTEE

## COMMITTEE MEMBERSHIP

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 Mr Michael Pettersson MLA

## SECRETARIAT

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## ROLE OF COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

## RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

- (1) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
  - (a) is in accord with the general objects of the Act under which it is made;
  - (b) unduly trespasses on rights previously established by law;
  - (c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
  - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (2) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;
- (3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
  - (a) unduly trespass on personal rights and liberties;
  - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
  - (d) inappropriately delegate legislative powers; or
  - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*; and
- (5) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

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# BILLS

## BILLS—NO COMMENT

The Committee has examined the following bills and offers no comments on them:

### **APPROPRIATION (OFFICE OF THE LEGISLATIVE ASSEMBLY) BILL 2019-2020**

This Bill will appropriate money for expenditure for the Office of the Legislative Assembly and officers of the Assembly, including the Integrity Commissioner, Auditor-General and Electoral Commissioner, for the financial year beginning on 1 July 2019.

### **APPROPRIATION BILL 2019-2020**

This Bill will appropriate money for the purposes of the Territory for the financial year beginning on 1 July 2019, and for other purposes.

## BILLS—COMMENT

The Committee has examined the following bills and offers these comments on them:

### **ACT TEACHER QUALITY INSTITUTE AMENDMENT BILL 2019**

This Bill amends the *ACT Teacher Quality Institute Act 2010* and the *ACT Teacher Quality Institute Regulation 2010* to provide for approval of pre-service teachers to undertake professional experience in ACT schools during pre-service teacher education, authorise the collection and disclosure of information about teachers to inform workforce planning, including disclosure to a research agency or data linkage agency approved by the Minister, and to strengthen academic teacher qualification requirements.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee terms of reference paragraph (3)(a)***

#### **Report under section 38 of the *Human Rights Act 2004* (HRA)**

##### **RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)**

In providing for the registration of pre-service teachers the Bill will require the disclosure of personal information to the ACT Teacher Quality Institute. The Institute will store and may share that information with others. The Bill also authorizes information about teachers and pre-service teachers to be collected and shared with research agencies for workload planning purposes. An individual's academic teaching qualifications will also be collected and stored by the Institute as a condition of registration. The Bill may therefore impact on the protection against unlawful and arbitrary interference with privacy provided by section 12 of the HRA.

The explanatory statement accompanying the Bill contains an extensive statement in support of any limitation using the framework set out in section 28 of the HRA. This includes details of the information to be collected as part of the registration process and the information provided to pre-service teachers and teachers about how their information may be used and shared. The explanatory statement includes reference to the purposes of the collection and sharing of

information and the protections put in place to protect privacy, including obligations placed on any data linkage agency approved by the Minister in assessing de-identified data as part of a national scheme for the reporting and assessment of workforce trends. The Committee commends the Minister for the detail included in the explanatory statement and refers that statement to the Assembly.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

## **LITTER LEGISLATION AMENDMENT BILL 2019**

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This Bill amends the *Litter Act 2004*, *Litter Regulation 2018*, and other related Acts and Regulations to update the penalties and offences relating to littering.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—  
Committee terms of reference paragraph (3)(a)***

### **Report under section 38 of the *Human Rights Act 2004* (HRA)**

#### **RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)**

The Bill will allow authorised officers to enter a vehicle that they reasonably suspect to be abandoned for the purpose of identifying the person responsible for the vehicle. This will provide the authorised officer with access to the interior of a private vehicle and any personal items or information left in the vehicle. This may potentially limit the protection against unlawful and arbitrary interference with privacy or reputation in section 12 of the HRA.

The explanatory statement accompanying the Bill recognises this potential limitation and provides a justification for why it should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that analysis to the Assembly.

The explanatory statement provides that the power of entry is only to be used when other external identifying information is not available, such as when the licence plate has been removed. The explanatory statement also asserts that once access has been gained the authorised officer will only take such actions that are necessary to gain the information required to identify the vehicle and responsible person. Any private information contained within the vehicle should be treated as confidential, not examined by the authorised officer and secured within the vehicle. However, the Committee is concerned that these safeguards are not expressly provided for in the Bill. Proposed section 24O provides an authorised officer with authority to enter a vehicle to identify the responsible person for the vehicle when they have reasonable grounds for believing that the vehicle has been abandoned at a public place. While restrictions on the purpose and use of personal information gained through entry may be implied in construction of the legislation, the Committee would consider it appropriate to include these safeguards expressly.

**The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.**

The Bill will also expand the offence of littering and dumping to include an open private place. However, the impact of this proposed offence on the activities that can be conducted on a person's own property is limited given the offence doesn't apply where the occupier has given their consent.



The Bill will also provide for action to be taken where what a reasonable person would consider litter have been accumulated at open private premises which significantly adversely impacts, or is likely to so impact, the amenity, wellbeing and the proper use and enjoyment of surrounding public or private land. This has the potential to limit the protection against interference with a person's home or privacy protected under section 12 of the HRA. This potential is recognised in the explanatory statement accompanying the Bill and a justification for the reasonableness of any limit provided using the framework set out in section 28 of the HRA. The Committee refers the Assembly to that statement. The Committee notes in particular the need for notice to be given before any action is taken and the range of matters that have to be taken into account, including the physical, mental or financial capacity of the person causing the impact to reasonably comply with any order. There is also a need for a magistrate's order before any enforcement action can be taken, and restrictions placed on the power to enter private places to implement any order.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

#### RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

The provisions relating to the depositing of litter that affects the amenity, use or enjoyment of adjoining land may unduly impact on individuals with mental health conditions or other circumstances which have led to the accumulation of litter on their property. This may be considered a potential limit on the right to equality before the law protected by section 8 of the HRA. The explanatory statement provides a justification for the reasonableness of any limitation using the framework set out in section 28 of the HRA. The Committee draws that statement to the attention of the Assembly. The Committee notes in particular the need for development of a code of practice which must be considered by the director-general in investigating complaints about the amenity impact of litter. Any disability a person may have and the impact of having to reasonably comply with any notice or order also has to be taken into account before any notice given or enforcement action taken.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

#### RIGHT TO THE PRESUMPTION OF INNOCENCE (SECTION 22 HRA)

The Bill provides for the introduction or increases in penalties associated with several strict liability offences. The potential impact of the strict liability aspect of these offences on the right to the presumption of innocence protected by section 22 of the HRA is recognised in the explanatory statement and a justification for their reasonableness provided, both in general terms in the statement on human rights effects of the Bill, and more specifically in outlining the particular offences. The Committee draws these statements to the attention of the Assembly.

The committee notes that many of these strict liability offences are based on littering, or the deposit of litter. Litter is currently defined in section 7 of the Litter Act as including:

...any solid or liquid waste, whether domestic or commercial, and also includes, for example—

- (a) any glass, metal, cigarette butt, plastic, paper, fabric, wood, food, abandoned vehicle and vehicle part, construction or demolition material, garden remnants and clippings, soil, sand or rocks; and
- (b) any material, substance or thing deposited at a place if its size, shape, nature or volume makes the place untidy or adversely affects the proper use of the place.

The Bill will amend this definition to omit reference to “for example” and to include examples of dockless bicycles and large piles of soil or rocks left on the side of the road or school playground for no purpose. As the accompanying note states, under the *Legislation Act 2001*, an example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears. The deposit of soil would therefore appear to meet the definition of litter due to its express mention in paragraph (a) of the definition without the qualifiers of being a large deposit for no purpose which makes the place untidy or affects proper use. The Committee is therefore concerned about the potential breadth of this definition, particularly when it is used as the basis for strict liability offences.

The Committee also notes that the Bill will introduce a definition of waste by reference to the dictionary in the *Waste Management and Resource Recovery Act 2016*. That Act contains two definitions for waste, one for Part 10 of that Act (as defined in section 63 of that Act—which doesn’t include sewage or something prescribed in regulations) and a general definition in Section 10, which states:

**waste** includes the following:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, whether or not intended for sale, recycling, reprocessing, recovery or purification by a separate operation from that which produced it;
- (c) any other substance declared by regulation to be waste.

There is no outline in the explanatory statement of why a definition of waste was added in the Bill. The Committee assumes that it is intended that the Litter Act is intended to incorporate the general definition of waste in the Waste Management and Resource Recovery Act. It would be preferable if the Bill or explanatory statement was amended to make this clear. The Committee is also concerned that the breadth of the definition of waste has the potential to significantly broaden the definition of litter, and in particular the construction of paragraph (a) of the definition.

While the Committee acknowledges that one of the intentions of the Bill is to allow a greater role for the use of infringement notices, which will allow a quick and flexible approach, guided by internal policies, in enforcing the Act. However, the Committee asks that consideration be given to clarifying the definition of litter and to avoid cross-references to other legislation.

**The Committee draws this matters to the attention of the Assembly, and asks the Minister to respond.**

***Do any provisions of the Bill inappropriately delegate legislative powers?—Committee terms of reference paragraph 3(d)***

#### CREATING OR DEFINING OFFENCES BY REGULATION

The Bill will create the strict liability offence of aggravated littering, involving littering in a public place where the litter is of a kind prescribed by regulations, with a maximum penalty of 50 penalty units (and an infringement notice of \$500). The Bill will also amend the *Litter Regulation 2018* to list cigarettes or cigarette butts and matches, whether lit or unlit, and syringes, as prescribed kinds of

litter for the new offence. The explanatory statement includes a discussion of why the prescribed items were included but does not justify why the Bill provides for the items to be proscribed in regulations rather than set out in the Act. The Committee requests an explanation and suggests that consideration be given to include an explanation in the explanatory statement.

The Bill will amend the power to make regulations in the Act to allow regulations to make provision for dockless bicycle or other transport sharing schemes, and to create offences with a maximum penalty of 30 penalty units, increasing the current maximum penalty of 10 units. The explanatory statement accompanying the Bill notes that the ability to create offences in regulations up to 30 penalty units is consistent with the *Guide to Framing Offences*, but does not provide a justification for the increase, or the retention of the ability to introduce penalties. The Committee requests a justification be provided and consideration given to including this in the explanatory statement.

**The Committee draws these matters to the attention of the Assembly, and asks the Minister to respond.**

#### INCORPORATION OF INSTRUMENTS

Clause 28 of the Bill will allow the Minister to approve a code of practice setting out minimum standards or guidelines for the Act. A code of practice must be approved to guide the director-general in dealing with the amenity impact of hoarding. Any code of practice can apply, adopt or incorporate an instrument as in force from time to time (proposed subsection 28(5)). While the Committee acknowledges that any instruments incorporated in a code of practice, and any amendments to such instruments, will be notifiable instruments under the Legislation Act, it still requests that an explanation be provided for why it is considered necessary to provide for incorporation of an instrument as in force from time to time.

**The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.**

### ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2019

This Bill amends various Acts and Regulations relating to road transport.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee terms of reference paragraph (3)(a)***

#### **Report under section 38 of the *Human Rights Act 2004* (HRA)**

RIGHT TO PROTECTION FROM MEDICAL TREATMENT WITHOUT CONSENT (SECTION 10 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO THE PRESUMPTION OF INNOCENCE (SECTION 22 HRA)

#### *Amendments to blood sampling provisions*

The Bill will amend the *Road Transport (Alcohol and Drugs) Act 1977* relating to the taking of blood samples. These amendments may limit the right to not be subjected to medical treatment without free consent protected under section 10 of the HRA, the protection against unlawful or arbitrary interference with privacy or reputation provided by section 12 of the HRA, and the right against self-incrimination protected as an element of the presumption of innocence protected by section 22 of the HRA.

Currently, it is an offence under section 15AA for a doctor or nurse to not take a sample of blood from a driver or driver trainer involved in an accident within 6 hours before arriving at the hospital. Section 18A extends this obligation to taking samples of any person involved in an accident on a road or road related area, including cyclists, horse riders and pedestrians. Where section 15AA makes it a requirement to take a sample, it is an offence under section 23 for a driver to make taking a sample impossible or impractical, and doctors and nurses are protected from liability for taking a sample under section 18.

The Bill will amend these sections by removing the offence element and consolidating in the one section the obligation to take a sample from both drivers and people involved in an accident. This will make it clear that an obligation to take a blood sample only arises where a person has been involved in an accident on a road in the ACT involving a vehicle (motor vehicle or bicycle, personal mobility device or animal drawn vehicle) or was riding an animal on a road. The Bill will also make it clear that a person who doesn't allow a sample to be taken commits an offence.

Various sections of the Alcohol and Drugs Act permit the refusal to take a sample or be subjected to medical tests or treatment due to it being detrimental to the relevant person's medical condition. The Bill will amend these provisions to allow refusal where the sample or test is prejudicial to the proper care and treatment of the relevant person or dangerous to the relevant person's health.

The explanatory statement accompanying the Bill recognises the potential impact of these amendments relating to taking of blood samples on the rights protected under sections 10, 12 and 22 of the HRA and sets out why they should be considered a reasonable limitation using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

RIGHT TO PROTECTION OF CHILDREN (SECTION 11 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

RIGHT TO LIBERTY AND SECURITY OF PERSON (SECTION 18 HRA)

*Power to require identification information*

The Bill amends the *Road Transport (Public Passenger Services) Act 2001* and the *Road Transport (General) Act 1999* to permit authorised persons and police officers to require a person's date of birth, in addition to name and address, when the authorised person or police officer believes on reasonable grounds that the person is committing or has just committed an offence against the road transport public passenger services legislation. They may also require production of an identification document when they believe the information provided to be false. A police officer or authorised person, in carrying out functions under road transport legislation, may also require a person riding an animal to produce an identification document if carrying one. It is generally a strict liability offence to refuse to provide details when required.

By requiring a child to provide identification and date of birth details these amendments may limit the protection of children provided by section 11 of the HRA. By requiring identification details to be provided where suspected of having committed an offence the amendments may impact on the protection against unlawful or arbitrary interference with privacy or unlawful attacks on reputation

provided by section 12 of the HRA. The implied authority to detain someone while they provide their identification details may limit their rights to freedom of movement protected by section 13 of the HRA and liberty and security of person protected by section 18 of the HRA. The explanatory statement accompanying the Bill sets out why these limitations should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.

The Committee notes that the explanatory statement, in setting out a justification for any limit to the right to protection of privacy, states:

Members of the public are likely to understand that using public transport or public roads involve a necessary limitation on their right to privacy and are therefore unlikely to have a reasonable expectation of privacy when using a public transport service or public road.

In the Committee's view, while riding on public transport may reduce reasonable expectations of privacy, they do not eliminate them altogether. Expectations of privacy would continue to include not having to make public identification details, including your date of birth. The Committee notes that the explanatory statement goes on to provide a justification for the Bill's potential impact on personal privacy.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

RIGHT NOT TO BE PUNISHED MORE THAN ONCE (SECTION 24 OF THE HRA)

### *Repeat offenders*

Section 32 of the *Road Transport (Driver Licensing) Act 1999* makes it an offence to drive while suspended. A person convicted of driving while disqualified will be subject to a period of automatic disqualification, which varies depending on the reasons for the original disqualification. Generally, the period of automatic disqualification increases as a person continues to drive while suspended. However, where the suspension results from non-payment of infringement notice penalties, non-compliance with an infringement notice management plan, fine default or exceeding the demerit point threshold, the current automatic disqualification period does not draw a distinction between first and repeat offenders. The Bill will provide for an increase in the period of disqualification in those circumstances.

The Bill will also amend provisions relating to habitual offenders in the Territory's interlock program. Under the *Road Transport (Driver Licensing) Regulation 2000*, a person who has committed three or more alcohol-related offences over a period of five years is categorised as a habitual offender. It is a condition of any probationary licence issued to habitual offenders to have their vehicles fitted with an alcohol ignition interlock device. The Bill will amend the definition of habitual offender to include offenders who have been issued with and not disputed an infringement notice issued in another state or territory.

By amending penalties for repeat offenders, irrespective of the reason for the original suspension or the location of previous offences, the Bill may impact on the right to equality before the law protected by section 8 of the HRA. By extending any period of disqualification or the conditions of any probationary licence the Bill may limit the right to freedom of movement protected under section 13 of the HRA and the right not to be punished more than once protected by section 24 of the HRA. The explanatory statement accompanying the Bill includes a discussion of these potential limitations and a justification for their inclusion in the outline of the individual provisions (see the outline to clause 29 at pages 18-20 and clause 32 at pages 21-22). The Committee recognises that there is a brief reference to this justification in the human rights statement included in the explanatory statement. However, generally a statement justifying the consistency or otherwise of the Bill with human rights, using the framework set out in section 28 of the HRA, should be included as part of the overview of the Bill rather than in the outline of individual provisions. See generally the Committee's *Guide to writing an explanatory statement*<sup>1</sup>, pages 4-7.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

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## **SENTENCING (DRUG AND ALCOHOL TREATMENT ORDERS) LEGISLATION AMENDMENT BILL 2019**

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This Bill provides for the establishment of an ACT Drug and Alcohol Court and associated support programs.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—  
Committee terms of reference paragraph (3)(a)***

### **Report under section 38 of the *Human Rights Act 2004* (HRA)**

RIGHT TO EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PROTECTION OF THE FAMILY AND CHILDREN (SECTION 11 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

RIGHT TO LIBERTY AND SECURITY OF PERSON (SECTION 18 HRA)

RIGHT TO A FAIR TRIAL (SECTION 21 HRA)

The Bill will enable the ACT Supreme Court to make a drug and alcohol treatment order which suspends a sentence for imprisonment for eligible offenders on condition that they agree to a complete a treatment program. The order can only be made once the offender pleads guilty to an eligible offence, is sentenced with imprisonment between one and four years, and is not subject to a sentencing order for any other offence. The Court must be satisfied that the offender is dependent on alcohol or a controlled drug which substantially contributed to the offence, and that they will live in the ACT for the term of the sentence. The offender has to give informed consent to the order, and can withdraw their consent at any time.

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<sup>1</sup> available at [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/434346/Guide-to-writing-an-explanatory-statement.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/434346/Guide-to-writing-an-explanatory-statement.pdf).

By requiring the offender to live in the ACT for the term of the sentence the Bill may discriminate against offenders that have no fixed address. The treatment order also only applies to adult offenders. The Bill therefore may limit the right to equality before the law protected by section 8 of the HRA.

The terms of a treatment order may require an offender to live separately to their family. By allowing an offender to remain in the community rather than being imprisoned, partners and children of a family violence offender may be subject to increased risk of harm. The Bill therefore may limit the protection of the family and children provided by section 11 of the HRA.

The Bill provides for information relating to the offender to be collected and possibly shared with members of the treatment order team (which includes an entity the Court considers necessary to include in the team) as part of determining suitability for the treatment order and the progress of the course of treatment provided for. A police officer is also able to arrest an offender subject to a treatment order without a warrant where they believe the offender has breached a treatment order obligation and it is not practicable to obtain a warrant. These provisions may limit the protection against unlawful or arbitrary interference with a person's privacy or reputation provided by section 12 of the HRA.

Conditions on treatment orders can include submitting to medical treatment or testing, attendance at particular treatment services, attending meetings, participating in programs and courses, imposing a curfew or limiting contact with certain persons. An offender subject to a treatment order must also obtain the Court's permission to leave or stay outside the ACT for more than 24 continuous hours. The Court is also able to make an order, potentially on its own initiative, where it is satisfied on the balance of probabilities that an offender has breached a condition on a treatment order requiring the offender to not drive a motor vehicle or impose other conditions on their movement. The Bill therefore may limit the right to freedom of movement protected by section 13 of the HRA.

Breach of a condition on a treatment order can result in the issue of a warrant by the Court for arrest and arrest by police officers where they believe the offender has breached a treatment order obligation and it is not practicable to obtain a warrant. The Court can make orders which may result in periods of imprisonment due to suspension or cancellation of the treatment orders. The Bill therefore limits the right to liberty and security of person protected by section 18 of the HRA.

Finally, the Bill restricts the ability to appeal various decisions of the Supreme Court, including decisions not to order an assessment, not to make a treatment order, that an offender breached a treatment order condition or to amend a treatment order. The Bill therefore potentially limits the right to a fair trial protected by section 21 of the HRA.

The explanatory statement accompanying the Bill sets out a justification for why each of the above potential human rights limitations are reasonable using the framework set out in section 28 of the HRA and the Committee refers that statement to the Assembly.

**The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

## PROPOSED AMENDMENTS—ANIMAL WELFARE LEGISLATION AMENDMENT BILL 2019

The Government has proposed amendments to the Animal Welfare Legislation Amendment Bill 2019. The amendments include amendment to the strict liability offence in section 15A of the *Animal Welfare Act 1992* relating to the transport of dogs to include the need to restrain dogs in a way which prevents them from injury. Other amendments respond to comments made by the Committee on the Bill in its Report no. 31 or make technical or minor amendments. The Committee makes no further comments in relation to the Bill or the proposed amendments.

## SUBORDINATE LEGISLATION

### DISALLOWABLE INSTRUMENTS—NO COMMENT

The Committee has examined the following disallowable instruments and offers no comments on them:

- **Disallowable Instrument DI2019-41 being the Public Unleased Land (Movable Signs) Code of Practice 2019 (No 1) made under section 27 of the *Public Unleased Land Act 2013* approves the Code of Practice for the Placement of Movable Signs in Public Places.**
- **Disallowable Instrument DI2019-42 being the Medicines, Poisons and Therapeutic Goods (Vaccinations by Pharmacists) Direction 2019 (No 1) made under section 352 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008* revokes DI2017-116 and provides that a pharmacist or intern pharmacist may administer vaccines to a person, aged 16 years or older, without prescription if they comply with the ACT Pharmacist Vaccination Standards as set out in Schedule 1.**
- **Disallowable Instrument DI2019-43 being the Road Transport (General) Autonomous Vehicle Trial Declaration and Order 2019 (No 1) made under sections 13 and 14 of the *Road Transport (General) Act 1999* declares that sections 264 and 265 of the Road Transport (Road Rules) Regulation do not apply to the autonomous vehicle participating in the autonomous vehicle trial.**
- **Disallowable Instrument DI2019-44 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2019 (No 3) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2018-71 and determines specified Tabcorp ACT Pty Ltd sub-agencies to be sports bookmaking venues for the purposes of the Act.**
- **Disallowable Instrument DI2019-45 being the Building (ACT Appendix to the Building Code) Determination 2019 made under subsection 136(3) of the *Building Act 2004* makes the ACT appendix to the Building Code of Australia.**
- **Disallowable Instrument DI2019-46 being the Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2019 made under subsection 44C(3) of the *Water and Sewerage Act 2000* makes the ACT appendix to the Plumbing Code of Australia.**
- **Disallowable Instrument DI2019-47 being the Government Procurement (Secure Local Jobs) Code 2019 made under subsection 22M(1) of the *Government Procurement Act 2001* revokes DI2018-283 and makes the secure local jobs code.**



- **Disallowable Instrument DI2019-49 being the Dangerous Goods (Road Transport) Fees and Charges Determination 2019 made under section 194 of the *Dangerous Goods (Road Transport) Act 2009* revokes DI2018-114 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-50 being the Work Health and Safety (Fees) Determination 2019 made under section 278 of the *Work Health and Safety Act 2011* revokes DI2018-227 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-51 being the Workers Compensation (Fees) Determination 2019 made under section 221 of the *Workers Compensation Act 1951* revokes DI2018-112 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-52 being the Machinery (Fees) Determination 2019 made under section 5 of the *Machinery Act 1949* revokes DI2018-110 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-53 being the Dangerous Substances (Fees) Determination 2019 made under section 221 of the *Dangerous Substances Act 2004* revokes DI2018-109 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-54 being the Veterinary Practice (Board) Appointment 2019 (No 2) made under subsection 93(2) of the *Veterinary Practice Act 2018* appoints a specified person as a member of the Veterinary Practitioners Board.**
- **Disallowable Instrument DI2019-55 being the Building (ACT Appendix to the Building Code) Determination 2019 (No 2) made under subsection 136(3) of the *Building Act 2004* revokes DI2019-45 and makes the ACT appendix to the Building Code of Australia.**
- **Disallowable Instrument DI2019-56 being the Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2019 (No 2) made under subsection 44C(3) of the *Water and Sewerage Act 2000* revokes DI2019-46 and makes the ACT appendix to the Plumbing Code of Australia.**
- **Disallowable Instrument DI2019-57 being the Rail Safety National Law (Drug and Alcohol Analysts) Appointment 2019 (No 1) made under section 11 of the *Rail Safety National Law (ACT) Act 2014* appoints four specified analysts currently engaged by the Office of the National Rail Safety Regulator to conduct alcohol and drug analysis for the purpose of the Rail Safety National Law.**

## DISALLOWABLE INSTRUMENT—COMMENT

The Committee has examined the following disallowable instruments and offers these comments on them:

### FEES INCREASES NOT SUFFICIENTLY EXPLAINED

- **Disallowable Instrument DI2019-48 being the Veterinary Practice (Fees) Determination 2019 (No 1) made under section 144 of the determines fees payable for the purposes of the Act.**

This instrument determines various fees, for the *Veterinary Practice Act 2018*, for the 2019-20 financial year. The relevant fees are increased on those payable for the 2018-19 financial year.

The explanatory statement for the instrument states:

This instrument sets out the fees payable to the board for the 2019-2020 financial year. This includes the renewal of registration of veterinary practitioners which are processed in advance of the financial year for continuity of registration purposes.

Schedule 1 provides details of the fee payable to the Board by the person requesting the service described in column 3. Column 4 of Schedule 1 is for comparison purposes only.

The fee payable for the 2019-2020 financial year is included at column 5. Fees have been increased by 2.5 percent based on advice from Treasury.

The Committee notes, with approval, that setting out the “old” and “new” fees, and identifying the percentage increase in fees, is in accordance with the Committee’s expectations, in relation to fees determinations (and other matters), set out in the Committee’s document titled [Subordinate legislation—Technical and stylistic standards—Tips/Traps](#).<sup>2</sup> In that document, the Committee states:

#### **FEES DETERMINATIONS**

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the “old” fee, the amount of the new fee, any percentage increase and also the reason for any increase (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid.

However, the Committee notes that, in this case, the explanatory statements does not indicate the **reason** for the 2.5% increase. The Committee considers that stating that the increase is “based on advice from Treasury” does not provide the **reason** for the increase, in the manner expected by the Committee.

The Committee seeks the Minister’s advice as to the reason for the fees increases provided for by this instrument.

**The Committee draws the attention of the Legislative Assembly to the instrument mentioned above, under principle (2) of the Committee’s terms of reference, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.**

**This comment requires a response from the Minister.**

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<sup>2</sup> [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf).

## SUBORDINATE LAWS—NO COMMENT

The Committee has examined the following subordinate laws and offers no comments on them:

- **Subordinate Law SL2019-6 being the Epidemiological Studies (Confidentiality) Amendment Regulation 2019 (No 1) made under the *Epidemiological Studies (Confidentiality) Act 1992* amends the Epidemiological Studies (Confidentiality) Regulation by inserting a new section 9 concerning pill testing in the ACT.**
- **Subordinate Law SL2019-7 being the Magistrates Court (Lakes Infringement Notice) Amendment Regulation 2019 (No 1) made under the *Magistrates Court Act 1930* amends the Magistrates Court (Lakes Infringement Notices) Regulation to include 23 offences and penalties under the Lakes Regulation for which an infringement notice may be issued.**
- **Subordinate Law SL2019-8 being the Lakes Regulation 2019 made under the *Lakes Act 1976* promotes the safe operation of boats on ACT lakes and harmonisation with surrounding NSW maritime law.**

## RESPONSES

### GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Planning and Land Management, dated 24 June 2019, in relation to comments made in Scrutiny Report 31 concerning the Planning and Development (Design Review Panel) Amendment Bill 2019.
- The Minister for City Services, dated 27 June 2019, in relation to comments made in Scrutiny Report 31 concerning the Animal Welfare Legislation Amendment Bill 2019.

[These responses](#)<sup>3</sup> can be viewed online.

- The Minister for Health and Wellbeing, dated 3 June 2019, in relation to comments made in Scrutiny Report 30 concerning the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (Qld).
- The Attorney-General, dated 19 July 2019, in relation to comments made in Scrutiny Report 31 concerning Disallowable Instruments—
  - DI2019-26—Legal Aid (Commissioner—Law Society Nominee) Appointment 2019, and
  - DI2019-27—Legal Aid (Commissioner—ACTCOSS Nominee) Appointment 2019.

[These responses](#)<sup>4</sup> can be viewed online.

The Committee wishes to thank the Minister for Planning and Land Management, the Minister for City Services, the Minister for Health and Wellbeing and the Attorney-General for their responses.

<sup>3</sup> <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/responses-to-comments-on-bills>.

<sup>4</sup> <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/response-to-comments-on-subordinate-legislation>.

## GOVERNMENT RESPONSES—COMMENT

### PLANNING AND DEVELOPMENT (DESIGN REVIEW PANEL) AMENDMENT BILL 2019

In its Report No 31, in commenting on the *Planning and Development (Design Review Panel) Amendment Bill 2019*, the Committee noted that design review panel rules and design principles did not have to be registered as notifiable instruments under the Legislation Act.

Design review panel rules may include rules about the terms of reference and constitution of the design review panel, how meetings are conducted, and processes and procedures for assessing development proposals, such as sources of best practice. The design review panel rules can incorporate any other instrument as in force from time to time, and any obligation for notification of any such incorporated instrument under section 47(6) of the *Legislation Act 2001* is expressly displaced. Any consultation with the design review panel on a proposed development has to comply with the design review panel rules. Design principles are used by the design review panel in providing design advice on proposed development proposals. Any design advice must be responded to in the development application and the response considered satisfactory by the planning and land authority before any development can be approved. Both the rules and principles must be published on the planning and land authority website.

The Committee asked for an explanation for why the Bill did not declare the rules and principles as notifiable instruments, and, in the case of the design review panel rules, why section 47(6) was displaced. In his response, dated 24 June 2019, the Minister stated that the design review panel was a non-statutory body with members appointed under contract. Publication on the authority website is:

“[c]onsidered the most appropriate approach as it will allow for minor refinements to be made to the administrative processes and procedures of the non-statutory body efficiently and in response to anticipated ongoing feedback from industry and community. This approach is consistent with a change to the definition of the term ‘public notification’ within the *Red Tape Reduction Legislation Amendment Act 2015* to allow ACT Government agencies to put notifications on a public website, as opposed to the Legislation Register.

As a new process in the ACT, having the flexibility to respond to feedback from industry, government and other major stakeholders on process and procedural matters will assist in building trust in the process for those who engage with the design review panel ...”

The Committee notes that the design review panel will be established under proposed section 138AG. While some of its members may be appointed by contract, the panel itself is not a non-statutory body. As described above, the rules and principles will be given legislative effect under the Bill as having to be complied with by the panel in providing design advice and possibly leading to the basis on which the planning and land authority may reject a development application. While the Committee recognises the benefits of flexibility, in its view the requirements of notification are not onerous and would provide both flexibility as well as certainty for the various stakeholders relying on the design review panel rules and principles in putting forward development applications.

The Committee also notes that the *Red Tape Reduction Legislation Amendment Act 2015* amended various pieces of legislation, including the Legislation Act, to allow for an alternative to publication in daily newspapers. That Act generally replaced references to “daily newspaper” with “public notice” and put in place a definition of “public notice” in the Legislation Act to mean a dated notice on an ACT Government website or notice in a daily newspaper. There was no apparent intention in those

amendments to provide for a public notice to act as a substitute for notification requirements on the ACT Legislation Register—indeed several pieces of legislation amended by the Red Tape Reduction Legislation Amendment Act continued to require both. In the Committee’s view, the requirement to publish a notice on an agency’s website is appropriate to provide awareness of administrative decisions made under legislation but not for instruments, such as the design review panel rules or principles here, which establish legally binding standards which are used to make further decisions under legislation. The Committee recommends that the Bill declare the rules and principles as notifiable instruments and that further justification be given for why instruments incorporated into the rules do not have to similarly be notified under section 47(6) of the Legislation Act.

**This comment requires a further response from the Minister.**

### **HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER LEGISLATION AMENDMENT ACT 2019 (QUEENSLAND ACT NO 3 OF 2019)**

The Committee commented on this National Law in *Scrutiny Report 30* of the 9<sup>th</sup> Assembly (30 April 2019). The issues identified by the Committee, in essence, related to the particular National Law under which it was made (ie the *Health Practitioner Regulation National Law (ACT) Act 2010*) and to features of that National Law that presented difficulties for the Committee (and the Legislative Assembly), in its legislative scrutiny role.

In terms of the Committee’s terms of reference, the Committee made comments about the adequacy of the explanatory statement for the National Law and, in particular, the fact that the explanatory statement did not address human rights issues that appeared to arise from the National Law. The Committee drew the attention of the Legislative Assembly to the National Law, under principle (2) of the Committee’s terms of reference, on the basis that the explanatory statement/notes provided with the National Law did not meet the technical or stylistic standards expected by the Committee in relation to explanatory statements.

The Committee sought a response from the Minister, on these issues.

The Committee also raised some practical issues, in relation to the commencement of the National Law and how a person or entity affected by the amendments made by the National Law in question would know that the amendments had commenced, let alone how such persons and entities would even be aware of the existence of the particular National Law.

The Committee indicated that it would appreciate the Minister’s views on this issue.

The Minister for Health and Wellbeing has provided the Committee with a detailed and very helpful response.

In the response, the Minister notes the limitations that the underlying National Law impose on the formal capacity of the Committee (and the Legislative Assembly) to scrutinise the particular National Law and, in addition, re-states her previous observation that “there is no obligation to provide explanatory statements” for National Laws such as the one being considered by the Committee. However, the Committee notes with approval that the Minister goes on to state:

However, as a matter of good practice, I will in future continue to provide a Tabling Statement to brief the Assembly on the policy intent and address the implications of amendments to the National Law. This could in future include addressing compliance with the ACT’s human rights legislation. I hope that this will be of benefit to the Assembly and address some of the concerns of the Committee regarding a lack of oversight.

The Committee thanks the Minister for this very helpful response to its concerns and looks forward to the implementation of the Minister's commitment to attempt to address the Committee's concerns, when tabling future National Laws, of this type.

The Minister's response then goes on to address, in detail, the human rights issues arising from this National Law. The Committee thanks the Minister for this very helpful response and draws the attention of the Legislative Assembly to the detail provided in the Minister's response.

On the commencement issues, the Minister's response states:

The amendments [made by this National Law] will commence when proclaimed in Queensland, and will be publicly announced, with an accompanying information awareness campaign for registered health practitioners and their employers. The ACT Legislation Register will be updated when the amendments come into effect, in line with current practice.

After noting the registration requirements of persons affected by the National Law, including an obligation to continue to meet professional standards and obligations, the Minister goes on to state:

The Australian Health Practitioner Regulation Agency (AHPRA) [ie the registration body, for health practitioners] is developing an information awareness campaign for health practitioners and their employers about the impending changes to those obligations as a result of the legislative amendment [made by this National Law]. AHPRA has commenced engagement with health practitioners regarding the content and delivery of the information material, and revisions to the relevant National Board guidelines.

The Committee thanks the Minister for this very helpful response.

As indicated above, the Committee is grateful for the very helpful approach taken by the Minister, in this response, and looks forward to the implementation of the Minister's commitment to attempt to address the Committee's concerns, when tabling future National Laws, of this type.

**This comment does not require a further response from the Minister.**

Giulia Jones MLA  
Chair

23 July 2019

# OUTSTANDING RESPONSES

## BILLS/SUBORDINATE LEGISLATION

- **Report 27, dated 18 February 2019**
  - Electoral Amendment Bill 2018 (Government Response).
- **Report 28, dated 12 March 2019**
  - Electoral Amendment Bill 2018 (Private Member's amendments).
- **Report 31, dated 28 May 2019**
  - Disallowable Instrument DI2019-32 Land Tax (Affordable Community Housing) Determination 2019 (No 1).
  - Disallowable Instrument DI2019-33 Domestic Animals (Cat Containment) Declaration 2019 (No 1).
  - Disallowable Instrument DI2019-37 Water Resources Environmental Flow Guidelines 2019.
  - Disallowable Instrument DI2019-39 Water Resources (Water Available from Areas) Determination 2019.